

REMARKS

Applicants note that on the "Office Action Summary" page, under the "Status" heading, this Official Action is checked off as a FINAL. However, Applicants further note that on page 2 of the Action, the Examiner states as follows: "Since the Examiner failed to address claim 8 in the previous office action, a new non-final action is herein addressed below." Additionally, the undersigned's assistant spoke with the Examiner on October 5, 2006 at which time he confirmed that the Action mailed September 29, 2006 is A NON-FINAL ACTION. The Examiner again confirmed that the Action is a NON-FINAL ACTION in a telephone conference with applicant's representative Joe Englander, Esq., on December 14, 2006, at which time the substance of the Action was discussed, without discussion of the present claim amendments.

Claims 1-9 are now presented for examination. Claims 1 and 9 have been amended. No new matter has been added.

Claims 1 and 9 are independent.

On page 2 of the Official Action, Claims 1-3, 6, 7, 8, and 9 are rejected under 35 U.S.C. §102(b) as being anticipated by Loper, U.S. Patent No. 212,242. Applicants respectfully traverse this rejection. In order for a reference to anticipate a claim, the reference must disclose each and every element of the claim. The independent claims, as amended, recite a "mounting portion having a contact surface having a first end, a second end distal from the first end, and a middle portion between the first end and the second end, wherein the first end and the second end are substantially coplanar with the middle portion." As shown below, this element is not disclosed in Loper.

The casting *D* in Loper does not have a mounting portion with a contact surface having a first end and a second end coplanar with the middle portion. As shown in Figures 2 and 3, Loper is “adapted to be received in a recess” cut into the frame of a door *A*’. (Col 2, l. 13-16). As a matter of basic geometry, the adaptation of Loper to be received in a recess means that a planar condition cannot exist in the contact surface of the mounting portion. Furthermore, Loper has “ears” *d*’ that extend beyond the borders of the recess and are meant to lie in contact with the frame while the middle portion of the casting *D* is meant to lie in contact within a recess *A*’ cut into the frame of the door. (See Figs. 2 & 3) Therefore, the ears disclosed in Loper cannot be coplanar with a contact surface adapted to fit within a recess. The ears as described belie any teaching of a contact surface having a first end, a second end distal from the first end, and a middle portion between the first end and the second end, wherein the first end and the second end are substantially coplanar with the middle portion. Thus, the contact surface of Loper cannot be substantially planar as taught in the present claims.

In addition, the present invention as described in the amended claims includes a fixed substantially planar support portion extending orthogonally from the top surface of the mounting portion. In Loper the support portion *F* has a pivoting connection *f* with the mounting portion *D*. (See Col. 1, l. 25-26 and Fig. 3)

In fact, Loper could not function if it were to include the fixed planar support described in the present claims. As shown in Fig. 2, the support in Loper *F* is intended to be able to pivot at *f* downward so that it is in the configuration shown in the dashed line. This pivotability is essential for Loper; without it, the locked configuration of Loper shown in Fig. 3 could never be

unlocked. Arm *E* of Loper, with its “enlarged lower or inner portion” is intended to be locked against the upper end of the slot *d* “by the constant force of a spring, *x*.” (See Col. 2, l. 18-24) Arm *E* could not be moved without the pivotability of arm *F*. Thus, the fixed substantially planar support portion is neither taught nor suggested by Loper.

Moreover, Loper teaches a hinged engagement portion *E* (See Figs 2 and 3) which overlaps a bar *C*. Loper does not teach the fixed locking element of the present invention. The Applicants’ invention, as described in the amended claims, has no hinged engagement portion.

Instead, the Applicants’ fixed locking element works in a different way and achieves a different result from the hinged engagement portion of Loper. The way the Applicants’ fixed locking element functions is by being in a position that slightly overhangs the rail to prevent the rail from easily being knocked free. The way Loper’s hinged engagement portion *E* functions is by completely overlapping the support portion whereby it is held closed by spring force. The result of the Applicants’ invention is a rail placed in front of an open aperture that can be easily removed intentionally but cannot be easily jostled. The result of Loper is a secured bar in front of a closed door or window. Thus, the hinged engagement element has a different function, way and result from the fixed locking element of the present invention.

Therefore, the language in the independent claims 1 and 9 has been amended to clarify the differences between the structure of the Applicants’ invention and the structure Loper. Reconsideration of the rejection is earnestly solicited.

On page 3 of the Office Action, Claims 4 and 5 are rejected under 35 U.S.C. §103(a) as being unpatentable over Loper. Claims 4 and 5 are believed to be allowable as they depend from

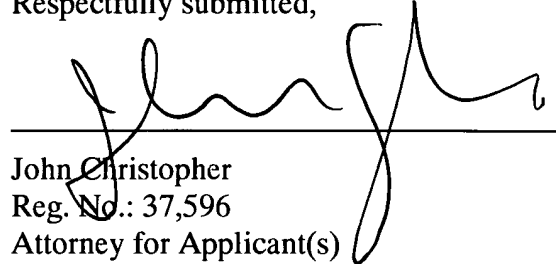
independent Claim 1. Moreover, "to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992); MPEP §2141.01(a)I. The similarities and differences in structure and function of the inventions to carry far greater weight than the patent classifications of the prior art and the Applicants art. *In re Ellis*, 476 F.2d 1370, 1372, 177 USPQ 526, 527 (CCPA 1973); MPEP §2141.01(a)II. As shown below, Loper is not analogous art, and should not be cited in an obviousness analysis for the Applicants' invention.

Loper is an invention for "an inside fastening for doors, shutters and the like[.]" (See Col. 1, l. 18-20). As such it is to secure a door or window in a closed position. On the other hand, the present invention is for a fall protection support bracket used "in the process of constructing buildings." (App. Para. 4). The fall protection bracket is used to prevent someone from falling through an open portal during construction. Loper, on the other hand, is art used for the enhanced securing of a closed portal after construction has been completed and the structure is occupied. Obviously, the purposes of the two inventions are in widely different fields of endeavor.

For all of the above reasons, the claim objections are believed to have been overcome placing Claims 1-9 in condition for allowance, and reconsideration and allowance thereof is respectfully requested.

The Examiner is encouraged to telephone the undersigned to discuss any matter that would expedite allowance of the present application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John Christopher', is written over a horizontal line.

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John Christopher
Reg. No.: 37,596
Attorney for Applicant(s)
Christopher & Weisberg, P.A.
200 East Las Olas Boulevard, Suite 2040
Fort Lauderdale, Florida 33301
Customer No. 31292
Tel: (954) 828-1488
Fax: (954) 828-9122

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